

Magistrate Judge Paula L. McCandlis

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,

v.

GENE WAMSLEY,
Defendant.

CASE NO. MJ20-342

COMPLAINT for VIOLATION

Title 18 U.S.C. § 641

BEFORE, The Honorable Paula L. McCandlis, United States Magistrate Judge,
U. S. Courthouse, Seattle, Washington.

COUNT 1

(Theft of Government Property)

Beginning on an unknown date, and continuing until on or about June 9, 2020, at
Seattle, within the Western District of Washington, and elsewhere, the Defendant, GENE
WAMSLEY, willfully and knowingly did steal and purloin a Philips Respironics Trilogy
Portable Ventilator and a Bronchoscope, of a value exceeding \$1,000, of the goods and
property of the United States.

All in violation of Title 18, United States Code, Section 641.

And the complainant states that this Complaint is based on the following information:

I, Malcolm Frederick, having been duly sworn, state as follows:

INTRODUCTION

1. I am a Special Agent with the United States Department of Veteran Affairs, Office of Inspector General (“VA OIG”) and have been so employed since April 16, 2017. I am currently assigned to the Seattle Resident Agency, Seattle, Washington. I am responsible for enforcing the laws of the United States relating to VA programs and operations. Prior to joining the VA OIG, I was employed as a Special Agent with the United States Secret Service for nine years and was assigned to the Seattle Field Office. I am a graduate of the Federal Law Enforcement Training Center located in Glynco, Georgia. I am also a graduate of the Secret Service Special Agent Training Program located in Beltsville, Maryland. Additionally, I am a graduate of the Washington State Basic Law Enforcement Training Academy and was a Commissioned Law Enforcement Officer with the Redmond Police Department for more than fourteen years. I also have a Bachelor of Arts Degree from the University of Washington.

2. Over the tenure of my law enforcement career, I have been involved in a wide spectrum of investigations, which include wire fraud, mail fraud, bank fraud, identity theft, access device fraud, counterfeit currency and exchanges, threats, weapons violations, theft of government property, and electronic crimes. I have also received specialized training in the investigation of basic electronic crimes involving the use of computers and other electronic devices.

3. As further detailed below, based on my investigation and the investigation of other law enforcement officers, I believe there is probable cause to conclude that GENE WAMLSEY has committed the offense charged in this complaint namely, Theft of Government Property in violation of 18 U.S.C. § 641, .

4. The information contained in this affidavit consists of my personal knowledge gained through this investigation, information provided by other law enforcement agents involved in this investigation, information provided by witnesses and others with knowledge of the relevant events and circumstances, information gleaned from my review of evidence, and my training and experience. Because this affidavit is

1 offered for the limited purpose of establishing probable cause, I list only those facts that I
 2 believe are necessary to support such a finding. I do not purport to list every fact known
 3 to me or others as a result of this investigation.

4 SUMMARY OF INVESTIGATION

5 A. Bronchoscopes

6 5. This investigation, which remains ongoing, has revealed that Gene
 7 WAMSLEY orchestrated and executed a fraudulent scheme involving the theft of
 8 government property, as described herein.

9 6. The first report of a missing Bronchoscope was filed with VA Police
 10 Services by RT Shelly Howe on January 10, 2020. Howe reported one missing
 11 Bronchoscope, identified as: (1) PULM #26 – Model BF-H190 – Serial # 2502108.
 12 Howe conducted an exhaustive search and was unable to locate the scope. Howe
 13 reported the scope became missing between December 31, 2019, and January 2, 2020.

14 7. A second report of a missing Bronchoscope was filed with VA Police
 15 Services by Howe on January 31, 2020. Howe reported a second missing Bronchoscope,
 16 identified as: (2) PULM #22 – Model #BF-F60 – Serial # 255095. Howe was unable to
 17 determine the time frame for the second missing scope.

18 8. A third report of missing Bronchoscopes was filed with VA Police Services
 19 by Howe on April 16, 2020. Howe reported the time frame for the third batch of missing
 20 scopes was between April 2, 2020, and April 8, 2020. Howe identified the missing
 21 Bronchoscopes as: (3) PULM #19 – Model BF-UC180F – Serial #7510942, (4) PULM
 22 #27 – Model BF-H190 – Serial # 2502154, (5) PULM #19 – Model BF-H190 – Serial #
 23 2502184.

24 9. I interviewed Howe, who reported she has never experienced
 25 Bronchoscopes missing before. Howe's department stores Bronchoscopes in a tall
 26 cabinet in the "Bronchoscope suite" room # 4D-180, at the Seattle VAMC. Howe
 27 reported although the storage cabinet is unlocked, the door to the suite is locked and
 28 requires a four-digit access code to manually unlock the door. Howe reported many

1 people know the code to the suite, to include all the Bronchoscopy doctors, RT's, and
2 some anesthesiologists. Howe reported a person would have to be familiar with the suite
3 in order to find the Bronchoscopes as the scopes are not easily visible.

4 10. Seattle VAMC staff in the Pulmonary Department reported finding several
5 Bronchoscopes listed for sale on eBay. I reviewed these reported eBay seller listings and
6 observed one of the listings included a sold Bronchoscope with a listed seller's location
7 as Bonney Lake, WA. The WAMSLEY's residence is in Bonney Lake, WA. The
8 following information was contained in the eBay listing: the Bronchoscope was described
9 as an Olympus BF type P60 Flexible Fiber Bronchoscope; the items condition was listed
10 as used; the date of sale was listed as April 28, 2020; and the seller's profile name was
11 listed as "Easy-Sells." The listing also contained the following comments, "To my
12 knowledge scope was last used in November of 2019. Unable to test it at this time so it is
13 being sold as parts. Unit is not damaged in any way that I can see and field of view is
14 crisp and clean." The Easy-Sells profile page listed additional items available for sale.

15 11. I used an investigative database known as Leads Online, to search eBay
16 records for account information associated with the eBay user ID Easy-Sells and the sale
17 of the listed Bronchoscope. eBay records revealed the Easy-Sells eBay user ID was
18 registered to:

19 Name: Gene Wamsley
20 Email: gXXXXX.wXXXXXX@outlook.com
21 Phone: 253-XXX-XXXX
22 Location: Bonney Lake, WA 98391

23 12. A search of active and completed sales for user Easy-Sells revealed there
24 were a total of 27 items, between January 7, 2020, and April 30, 2020, that were either
25 actively for sale or a completed sale. I reviewed the list of items and found that user
26 Easy-Sells had recently sold 3 Bronchoscopes. The details of these sales are as follows:
27
28

<u>Start Date & Time</u>	<u>End Date & Time</u>	<u>Description</u>	<u>Status</u>
3/31/2020 / 2:38 PM	3/31/2020 / 9:10 PM	Olympus BF-H190 Bronchoscope *Free Shipping Item ID: 133375767567	Completed
4/3/2020 / 6:44 AM	4/3/2020 / 1:50 PM	Olympus BF-H190 Bronchoscope *Free Shipping Item ID: 133378196170	Completed
4/3/2020 / 1:51 PM	4/3/2020 / 8:15 PM	Olympus BF-H190 Bronchoscope *Free Shipping Item ID: 133378450461	Completed

13. I reviewed eBay sale records regarding the purchasers of the 3 Bronchoscopes listed above. Sales records identified the purchaser of eBay item # 133378196170 as eBay user ID Countrycowboy1819. eBay records show this user ID belongs to C.L., Linden, TN.

14. On May 27, 2020, C.L. was interviewed by VA OIG Agents from the Nashville Resident Agency. C.L. acknowledged that on April 3, 2020, he preliminarily purchased the Olympus BF-H190 Bronchoscope, Serial # 2502108, on eBay for \$4,200.00 from eBay username Easy-Sells. C.L. ultimately canceled the purchase of the Bronchoscope on the same day, April 3, 2020, because the picture of the Bronchoscope in the listing did not show a serial number. C.L. never took possession of the Bronchoscope.

15. On May 27, 2020, I spoke with C.L. by phone. He explained he has been buying and reselling medical equipment for approximately five years, and he has bought many pieces of equipment on eBay. In this instance, C.L. reported finding the Bronchoscope listed for sale on eBay and clicked "Buy it now." Due to the fact that the listing picture of the Bronchoscope showed that the scope was missing the serial number plate, C.L. sent an email to user Easy-Sells and inquired why the device was missing the serial number plate. User Easy-Sells responded, "There is just did not take a picture of it. It is 2502108." This is the same serial number as the Bronchoscope which was reported missing from VAMC on January 10, 2020, as described above.

16. C.L. reported on the same day, user Easy-Sells sent a picture of the serial number plate attached to the scope and the picture appeared different than the first picture. This series of interactions with user Easy-Sells caused C.L. to feel suspicious about the purchase and Lavy cancelled the transaction. C.L. reported not taking possession of the scope as a result.

B. Philips Respironic Trilogy 100 Ventilators

17. A further review of the list of active or completed items for user Easy-Sells revealed that WAMSLEY sold five Philips Respironics Trilogy 100 Ventilators. The details of these sales are as follows:

<u>Start Date & Time</u>	<u>End Date & Time</u>	<u>Description</u>	<u>Status</u>
3/17/2020 / 2:26 PM	3/17/2020 / 1:25 PM	Philips Respironics Trilogy 100 Ventilator with extras Item ID: 133363842065	Completed
4/16/2020 / 8:06 AM	4/17/2020 / 7:45 AM	Philips Respironics Trilogy 100 Ventilator	Completed

		Item ID: 133388417636	
4/23/2020 / 12:48 PM	4/24/2020 / 10:33 AM	Philips Respironics Trilogy 100 Ventilator Item ID: 133393973405	Completed
4/26/2020 8:53 PM	4/27/2020 8:19 AM	Philips Respironics Trilogy 100 Ventilator Item ID: 133396338190	Completed
4/29/2020 12:25 PM	4/30/2020 11:02 AM	Philips Respironics Trilogy 100 Ventilator Item ID: 133398329531	Completed

18. I reviewed eBay sale records regarding the purchasers of the 5 ventilators listed above. Sales records identified the purchaser of eBay item # 133398329531 as eBay user ID “tngrowland.” eBay records show this user ID belongs to T.R. and T.R., North Olmstead, Ohio.

19. I spoke with Dr. Simon Kim, the COVID-19 Coordinator for Seattle VAMC. Dr. Kim reported that in response to the COVID-19 pandemic, Seattle VAMC conducted an inventory of all available ventilators. The inventory determined Seattle VAMC should had 5 Trilogy 100 ventilators, which were inventoried by the Biomedical Engineering Department at the Seattle VAMC.

20. I exchanged emails with Madison Pallante, a Biomedical Engineer at Seattle VAMC. Pallante confirmed the identifying data concerning the 5 Trilogy 100

1 ventilators and reported the ventilators were controlled by the Respiratory Therapy
2 Department.

3 21. I spoke with Kristina Martinson, the Acting Chief of Respiratory Therapy
4 for Seattle VAMC. Martinson reported being unable to locate three of the five Trilogy
5 100 Ventilators identified as: EE #115261, EE #115262, and EE #115264. As such,
6 Martinson officially declared these three ventilators missing. The following is a list of
7 the 5 ventilators and their identifying data:

8 EE # 9 (VA ID)	Manufacturer	Equipment Name	Model	Serial Numbers	Status
10 115261	11 PHILIPS 12 RESPIRONICS	TRILOGY 100 PORTABLE VENTILATOR	TRILOGY 100	TV114031304	Missing
13 115262	14 PHILIPS 15 RESPIRONICS	TRILOGY 100 PORTABLE VENTILATOR	TRILOGY 100	TV114061257	Missing
16 115263	17 PHILIPS 18 RESPIRONICS	TRILOGY 100 PORTABLE VENTILATOR	TRILOGY 100	TV11406126E	Present
19 115264	20 PHILIPS 21 RESPIRONICS	TRILOGY 100 PORTABLE VENTILATOR	TRILOGY 100	TV11406137F	Missing
22 115265	23 PHILIPS 24 RESPIRONICS	TRILOGY 100 PORTABLE VENTILATOR	TRILOGY 100	TV11406126F	Present

25 22. On May 18, 2020, VA OIG Agents from the Cleveland Resident Agency
26 interviewed T.R. T.R. confirmed that on April 30, 2020 he purchased a Philips
27 Respironics Trilogy Portable Ventilator on eBay for \$6,000.00 from eBay user Easy-
28 Sells. T.R. had the Trilogy Ventilator in his possession and was using it to treat his

1 condition (Chronic Obstructive Pulmonary Disease). T.R. presented the Trilogy Portable
2 Ventilator to Agents and they identified it as having serial number TV114031304,
3 matching one of the missing Seattle VAMC devices.

4 23. I spoke with T.R. by phone. He reported paying approximately \$6,140.00
5 for the ventilator, which included the cost of shipping. The ventilator was shipped to him
6 priority mail by United States Postal Service (USPS). T.R. reported the packaging label
7 had the following return address information: Gene WAMSLEY, XXXXXXXXXXXX,
8 Bonney Lake, WA 98391-8206.

9 24. I searched the VA global email address directory and found the name Gene
10 WAMSLEY listed as a VA employee working as an RT at the Seattle VAMC.
11 Additionally, I found the name Jennifer Wamsley, also listed as a VA employee, working
12 at the American Lake VAMC campus as an RT. I reviewed VA employee records and
13 confirmed that both Gene WAMSLEY and Jennifer Wamsley are VA employees.

14 25. I spoke with Kristina Martinson who reported supervising all the RT's at
15 the Seattle VAMC, to include Gene WAMSLEY. Martinson identified Gene and
16 Jennifer WAMSLEY as husband and wife. Martinson confirmed Jennifer is an RT, but
17 she has a different supervisor because of Jennifer's assignment to the American Lake
18 campus.

19 26. Martinson reported in March 2020, having looked for all five ventilators
20 and was only able to locate three of them. Martinson reported Trilogy ventilators are
21 kept in "open storage" at two locations in the department and neither location is locked.
22 Trilogy ventilators are not used at the American Lake campus.

23 27. Martinson reported WAMSLEY has made comments in the past about
24 selling "a lot of stuff" on eBay. Additionally, Martinson recalled that WAMSLEY had
25 recently built a new house in November or December of 2019. And that approximately
26 three months prior to building his house, WAMSLEY was openly complaining about
27 money troubles and had talked about credit repair.
28

28. I read to Martinson a list of medical equipment/supplies that were listed as sold on WAMSLEY's eBay account. I asked her to verify whether the equipment was used in the Respiratory Therapy department and whether she was aware if any of the listed equipment was currently missing. Martinson confirmed that all the medical equipment listed in the table below is used in the Respiratory Therapy department. Martinson provided me with the following information:

<u>eBay Item Description</u>	<u>Available at VAMC</u>
Fisher Paykel 900MR805 Heater Wire Adapter	Kept in the equipment room where the ventilators are stored. There is a full drawer of them.
Maquet Battery Module 6487180 Maquet Critical Care AB	Kept in the equipment room and stored with all the other batteries. These batteries are for ventilators.
ResMed S9 H5i 36803 Water Chamber / Tub / Reservoir	Not certain if they are inventoried and they are used in the RT department. Possibly controlled by Omnicell machine.
Maquet Servo-U expiratory cassette, Ventilator part (New)	Used for Servo-U ventilators.
Maquet Servo Duo Guard Ventilator Filter	Filters for ventilators. Stored and dispensed by the Omnicell machine.
Passy-Muir Tracheostomy & Ventilator Swallowing Speaking Valve PMV 2001	A speaking valve that is stored and dispensed by the Omnicell machine.
NOX-T3 Nonin Portable Sleep Study Monitor w/ Wrist Ox	This is a device used at the Seattle VAMC. The Respiratory Therapy department is supposed to have 2 devices and 1 has been missing since the middle of February.

1	Respironics Alice 6 pressure sensor.	This is a CPAP device that is used in sleep
2	NEW	medicine. They have them at both Seattle
3		VAMC and American Lake. Not sure if
4		they are inventoried property.

5 29. Martinson explained to me there are two Omnicell machines in her
6 department that store some of the medical equipment and supplies we discussed. One of
7 the machines is unsecure and anyone can open the machine and grab equipment. The
8 second Omnicell machine is locked and requires pass code access. Staff in Martinson's
9 department have access to both Omnicell machines.

10 30. Martinson reported that she is responsible for scheduling work shifts for all
11 the RT's at the Seattle VAMC. Martinson provided me with the work schedules for all
12 the RT's working at the Seattle VAMC between December 2019 to May 2020. I
13 reviewed these schedules and noted that WAMSLEY worked on the following dates:
14 December 31, 2019, January 1, 2020, and January 4, 2020. This was during the time
15 frame that Howe reported the first two Bronchoscopes became missing. WAMSLEY
16 also worked on the following dates: April 4, 2020 and April 6, 2020 through April 8,
17 2020. This was during the time that Howe reported three Bronchoscopes were taken
18 from the Bronchoscope suite storage cabinet.

19 **C. eBay Records for Easy-Sells Account**

20 31. I obtained and reviewed official account registration records for the eBay
21 user ID account Easy-Sells. Records identify the Easy-Sells account as being registered
22 beginning on January 7, 2020. The account was registered from IP address
23 24.19.157.216. The Easy-Sells account is registered to the name Gene WAMSLEY and
24 the registered shipping address is listed as XXXXXXXX, Bonney Lake, WA 98391-
25 8206, the SUBJECT PREMISES where a residential search warrant was ultimately
26 obtained and executed on June 9, 2020.

27 32. I reviewed an official list provided by eBay of all items sold by eBay user
28 ID Easy-Sells for the time period between January 7, 2020, and April 30, 2020. Some of

1 the data includes the “listing IP” address, the eBay “item ID” number, and general
2 shipping information. Notably, this list contained a total of 60 items of medical
3 equipment, to include five Trilogy Ventilators and three Bronchoscopes.

4 33. IP address 24.19.157.216 was identified by eBay as the listing IP address
5 for 38 of the 60 items listed for sale on the Easy-Sells account to include four Trilogy
6 Ventilators and two Bronchoscopes. I used the IP address lookup tool WhatIsMyIP.com
7 to determine the geolocation of this IP address. My search revealed IP address
8 24.19.157.216 is listed as being in Bonney Lake, WA.

9 **D. June 9, 2020, Execution of Search Warrant at Gene WAMSLEY’S Residence**
10 **Located in Bonney Lake, WA**

11 34. On June 9, 2020, United States Department of Veteran Affairs, Office of
12 Inspector General Special Agents executed a judicially authorized search warrant seeking
13 evidence of the crimes of Theft of Government Property, Wire Fraud, and Mail Fraud, in
14 violation of Title 18, United States Code, Sections 641, 1341, and 1343. Many items of
15 evidentiary value were seized, including: a Bronchoscope, two Continuous Positive
16 Airway Pressure (CPAP) machines, CPAP mask(s), ventilation tubes, shipping
17 documents, eBay receipt documents, and several digital devices.

18 **E. Interview of Gene WAMSLEY**

19 35. While agents were executing the search warrant upon Gene WAMSLEY’S
20 Bonney Lake residence, myself and Special Agent Joe McGivern met with Gene
21 WAMSLEY at the Veteran’s Affairs Medical Center campus in Seattle, where Gene
22 WAMSLEY was scheduled to work a shift.

23 36. WAMSLEY was interviewed for approximately two hours in a conference
24 room in the Respiratory Therapy Department located on the fourth floor of the Seattle
25 VAMC. At the beginning of this interview, WAMSLEY was advised that he was not
26 under arrest and was free to leave at any time. Prior to any questioning, WAMSLEY was
27 informed of his Garrity Rights. He acknowledged his understanding of these rights and
28 his willingness to be interviewed by signing a VA OIG Garrity Rights form.

1 37. During the first half of the interview, WAMSLEY denied having
2 knowledge or involvement with the stolen Bronchoscopes from the Seattle VAMC. He
3 also denied having any connection to the eBay user ID Easy-Sells, having any knowledge
4 of the email address gXXXXXX.XXXXXX@outlook.com (the email address associated
5 with the Easy-Sells account), or selling any VA medical equipment on eBay. In fact,
6 WAMSLEY suggested the Easy-Sells account was being operated by someone else.

7 38. I presented WAMSLEY with a paper copy of the search warrant that was to
8 be executed on his residence. During the interview WAMSLEY signed a Consent to
9 Search form authorizing me to review photographs contained on his Apple I phone Xs
10 Max MaxS. I scrolled through the digital photographs stored on WAMSLEY's phone
11 and found several images relevant to this investigation, including: a screen shot image
12 depicting account contact information for the eBay account belonging to XXX XXX,
13 Brownsville, TX 78521, operating under eBay user ID XXXXXXXX; two images showing
14 a Philips Respironics Trilogy Ventilator being listed for sale on eBay; an image of eBay
15 account information for the eBay user ID Easy-Sells, which depicted the recent sale of a
16 Bronchoscope.

17 39. During the second phase of the interview, WAMSLEY admitted agents
18 would find a stolen bronchoscope at his Bonney Lake, WA residence that WAMSLEY
19 took from the VA. At the conclusion of the interview, I seized the Apple I phone Xs Max
20 MaxS in light of the evidence contained therein and have subsequently prepared a search
21 warrant authorizing a complete forensic examination of the phone. Gene WAMSLEY
22 was not placed under arrest, but was placed on administrative leave by the VA.

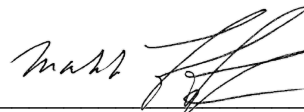
23 **F. Admissions by WAMSLEY**

24 40. On June 10, 2020, I was contacted by Kristina Martinson, Acting Chief of
25 Respiratory Therapy. She informed me that on June 10, 2020, at approximately 11:50
26 am, she received a phone call from WAMSLEY. WAMSLEY told her he had been "in a
27 very dark place for the past year and a half" and he wanted to apologize. He told
28

1 Martinson he “did do some of the things that he is accused of, but not all” and “some
2 were done by people that still work here.”

3 **CONCLUSION**

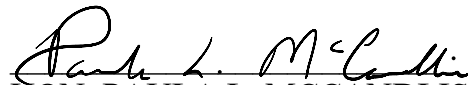
4 41. Based on the above facts, I believe that there is probable cause to conclude
5 that GENE WAMSLEY committed the offense of Theft of Government Property, in
6 violation of Title 18, United States Code, Section 641.

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10 MALCOLM FREDERICK
11 Special Agent, VA
Office of Inspector General

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13 Based on the Complaint and Affidavit sworn to before me, and subscribed in my
14 presence, the Court hereby finds that there is probable cause to believe the Defendant
15 committed the offense charged in this Complaint.

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17 DATED this 12th day of June 2020.

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20 HON. PAULA L. MCCANDLIS
21 United States Magistrate Judge
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